

SEP 6 1989

JOSEPH F. SPANIOL, JR.  
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No. 89-227

**In The  
Supreme Court of the United States  
OCTOBER, 1989 TERM**

RON BROWN,

*Petitioner-Appellant,*

*v.*

VIAL, HAMILTON, KOCH & KNOX, et al.,

*Respondents-Appellees*

**On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit  
From Case Number 88-1482**

**RESPONDENTS MEMBERS INSURANCE GROUP  
RUTH HUNTER, LEONARD ADKINS  
BRIEF IN RESPONSE TO PETITION FOR  
CERTIORARI OF APPELLEES**

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September, 1989

### **CERTIFICATE OF INTERESTED PARTIES**

Pursuant to the provisions of Rule 22, Rule 33 and Rule 34 of the Rules of the Supreme Court, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

The parties are as follows:

Petitioner-Appellant:

Ron Brown

Respondents-Appellees:

Vial, Hamilton, Koch & Knox

Byron L. Falk

Touchstone, Bernays, Johnston, Beall & Smith

Wade C. Smith

Sidney H. Davis, Jr.

Passman, Jones, Andrews & Holley

Shannon Jones, Jr.

Johnson, Bromberg & Leeds

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Robert W. Hartson

State Unauthorized Practice of Law Committee,  
State Bar of Texas

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Dick Gallatin

Fireman's Fund Insurance Co.

Ron Watson

Van Sims

Members Insurance Group

Ruth Hunter

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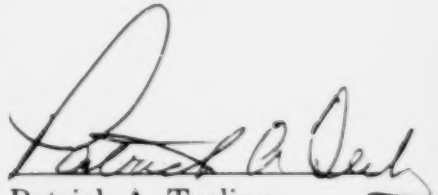
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No. 89-227

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CERTIORARI OF APPELLEES**

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**STATEMENT OF THE ISSUES  
IN SUPPORT OF DENIAL OF  
THE PETITION FOR CERTIORARI**

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I.

THE DISTRICT COURT CORRECTLY GRANTED,  
AND THE COURT OF APPEALS CORRECTLY  
UPHELD, APPELLEES' MOTION FOR DISMISSAL AS  
SUPPORTED BY THE EVIDENCE IN RECORD WHICH  
ESTABLISHES THAT PETITIONER-APPELLANT  
WAS ENGAGED IN AN UNLAWFUL BUSINESS AND  
THAT PETITIONER-APPELLANT HAD RECEIVED  
DUE PROCESS IN THE STATE DISTRICT AND  
APPELLATE COURTS.



## II.

THE DISTRICT COURT CORRECTLY GRANTED, AND THE COURT OF APPEALS CORRECTLY UPHELD, APPELLEE'S MOTION FOR DISMISSAL WHICH IS SUPPORTED BY EVIDENCE ATTACHED TO THE MOTION TO DISMISS WHICH ESTABLISHES THAT NONE OF THE APPELLEES VIOLATED THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

## III.

THE DISTRICT COURT CORRECTLY DISMISSED, AND THE COURT OF APPEALS CORRECTLY UPHELD, PETITIONER-APPELLANT'S CAUSE OF ACTION BASED UPON FEDERAL AUTHORITY AND DUE PROCESS.

**ARGUMENT**

Appellee Members Insurance Group, Ruth Hunter and Leonard Adkins (hereinafter referred to as "Respondents") agree that this Honorable Court has the jurisdiction for this appeal from the United States Court of Appeals for the Fifth Circuit based upon the provisions of 28 U.S.C. 1257, but there is no statute in question which is seriously contemplated to be in conflict with the United States Constitution or the treaties and laws of the United States. Therefore, pursuant to the provisions of Rule 16.1(c) of the Rules of the Supreme Court, Respondents urge that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument or review. By decisions reviewing similar situations and cases of unauthorized practice of the law and insurance claims adjusting, this Honorable Court has articulated a clear and unequivocal standard

for Federal Courts and the States to follow in these areas. There is no diversity of opinion in any of the Courts of Appeal on this issue, nor diversity of opinion with any state court. Thus, Brown's Petition for Certiorari is inconsequential and should be denied.

### STATEMENT OF THE NATURE OF THE CASE

Appellant Ron Brown (hereinafter "Petitioner" or "Brown") brought this suit against Respondents seeking federal protection of his business activities as an agent or representative in the settlement of personal injury, property and insurance claims. Respondents agree with Petitioner's Statement of the Case in his brief.

This is an appeal from a dismissal by the United States District Court for the Northern District of Texas, the Honorable A. Joe Fish, United States District Judge, presiding, and the upholding of said dismissal by the Court of Appeals for the Fifth Circuit by unpublished opinion by Judge Reavley.

### STATEMENT OF FACTS

Petitioner was the Defendant in a suit brought in Texas State Court proceeding brought by the State of Texas for the unauthorized practice of law. The State of Texas prevailed in the proceeding, resulting in a final judgment, prior to the dismissal of the Petitioner's action in the Court below. Petitioner ignores the *Younger* abstention doctrine in his Statement of Facts regarding the issues below.

The Motion to Dismiss filed by Respondents in the United States District Court, below, unlike the other Respondents in this appeal, is supported by Plaintiff's Answers to Interrogatories which were attached to the Motion to Dismiss. This is not to downplay the relevance

nor authority cited by the other Respondents in their briefs, but rather is merely noted to the Court in support of the action taken by the Trial Court and Court of Appeals.

In summary, Respondents disagree with the characterization of the activities and the characterization of the decision by the Texas state courts as a "sham judgment". The activities conducted by Petitioner are violative of statutory law and the unauthorized practice of law in the State of Texas.

### ARGUMENT AND AUTHORITIES

Petitioner brought this action against Respondents, claiming that his business as an agent or representative of others in the settlement of personal injury and insurance claims was afforded protection of the United States Constitution and the anti-trust laws of the United States. The State of Texas had obtained a prior judgment in Texas state court which specifically found that the activities by Petitioner violated the State's law regarding the unauthorized practice of law and State insurance law. Petitioner appealed the State District court judgment, which resulted in an Petitioner finding in favor of the Respondents, supporting the State District Court's judgment. At all times in the state court proceedings, Petitioner chose to represent himself and had full opportunity to, and did, raise the same issues in the state court as represented in the United States District Court below. *Brown vs. Unauthorized Practice of Law Committee*, 742 S.W. 2nd 34 (Tex.Civ.App.-Dallas 1987). Petitioner exhausted all avenues of appeal regarding the issues which were presented, or which could have been presented, during the state court proceedings.

The principal reason for the dismissal of Petitioner's claims is the lack of standing. The principal decision in this area is *Turner vs. American Bar Association* 407 F.Supp. 451, (N.D. Tex., 1975), *aff'd. sub nom.*; *Taylor vs. Montgomery*,

539 F.2d 715 (7th Cir. 1976); *Pilla v. American Bar Association*, 452 F.2d 56 (8th Cir. 1976) at 479 in which the Court stated that in an anti-trust action, "the plaintiff must sufficiently allege *and* demonstrate that his *legally cognizable business or property* has been injured as a proximate result of the alleged violation of the anti-trust laws." As a matter of law, from the authorities cited by the Respondents, there exists no right or privilege under the First or Sixth Amendments to the United States Constitution to have an unlicensed layman represent other parties in litigation or settlement of insurance disputes. Thus, the claims by Petitioner are void and are the proper subject of dismissal, and the denial of the Petition for Certiorari. The Respondents urged that this cause of action be classified for what it is, and not for how it is creatively styled. In this appeal, Petitioner sues the Respondents to force them to permit him to practice law and to represent insurance claimants, despite the fact that he is not licensed by the State of Texas for either of these activities. Petitioner's lack of licensing is evidenced by his response to Appellee's Interrogatory Number 26, which was attached to the Motion to Dismiss below. The Texas Legislature has mandated that attorneys be licensed and that State Insurance adjusters be licensed. Petitioner seeks to have a federal court overrule these state decisions, and to substitute the decision by the federal court for that of the state. Such a position completely ignores the *Younger* abstention doctrine. Clearly, the practice of law and settlement of insurance disputes are matters of vital state interest and sovereignty. *Bates vs. State Bar of Arizona*, 433 U.S. 350 at 359-60, 97 S.Ct. 2691 at 2696-97, 53 L.Ed.2d 810 (1977). In *Hoover v. Ronwin*, 466 U.S. 558 (1984) at 569, the Court citing *Parker v. Brown*, 317 U.S. 341 (1943), declined to "construe the Sherman Act as prohibiting the anti-competitive actions of a state acting through its legislature . . . . When a state legislature adopts legislation, its actions constitute those of the State . . . and are *ipso facto* exempt from

the operation of anti-trust laws . . . The Court . . . has found the degree to which the state legislature or Supreme Court supervises its representative to be relevant to the inquiry . . . When the conduct is that of the sovereign itself, on the other hand, the danger of unauthorized restraint of trade does not arise." The State of Texas in these situations seeks to prevent fraud from being perpetrated upon its citizens by unauthorized and unlicensed representatives. Similarly, the State of Texas seeks to prevent fraud and incompetence from being perpetrated upon its citizens by those unlicensed to practice law. These activities have been recognized by the Supreme Court as matters of vital state interest in *Middlesex Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982) at 433-434.

Petitioner has failed to demonstrate a denial of due process, bad faith, harassment, or any other exceptional circumstance which justifies intervention by Federal Court. Petitioner has had the opportunity to raise these issues time and time again in the state court proceedings and in his appeal, but has failed to do so. Therefore, as a matter of law, Petitioner is collaterally estopped from raising these issues again in Federal Court. There is no evidence that Petitioner has introduced and the Court below reflecting that the State Court action was a "sham" as he has depicted same. The lower Court afforded Petitioner the opportunity to respond to the Motions to Dismiss filed by Respondents, but Petitioner offered no evidence or authority to support his position that all of the courts and judges which heard his appeal in the state court proceedings deprived him of civil rights or federally protected constitutional rights.

As was noted in the Respondents' Brief, in the Support of the Motion to Dismiss in the District Court and in their brief before the Court of Appeals, and in all of the briefs and motions filed by Petitioner, he has repeatedly cited inappropriate and inapplicable authorities. He picks and choses

language from court decisions which seem appropriate, but when read in context of the decision, are inopposite of the decision. Petitioner ignores the fact that his "business" has been repeatedly adjudicated by both Federal and State Courts, including this Honorable Supreme Court, as being illegal, and not protected by Federal Law, including anti-trust laws. In order to obtain protection of the Sherman Act, the business conducted by a party must be legal. Such is simply not the case in the current matter. Therefore, no federal protection should be afforded to illegal activities conducted by Petitioner.

## CONCLUSION

The Court of Appeals and the District Court below properly granted the Appellees' Motion to Dismiss inasmuch as there is no evidence of any probative force or genuine issue of fact. The activities conducted by Petitioner are those of an illegal nature which violate State Law concerning issues of vital importance to the State. The trial court below afforded Petitioner full opportunity to introduce factual evidence to support his contention that he was denied due process in his State Court proceedings. Pursuant to the arguments involved in collateral estoppel and the *Younger* abstention doctrine, the trial court properly dismissed his action for the reasons and by the authorities cited in the Memorandum Order of May 12, 1988. Thus, the claims by Petitioner were properly dismissed, because as a matter of law, his activities are not protected, there has been no violation of due process, and Petitioner has not cited any authority to the Court to permit jurisdiction to lie. The Answers by Petitioner to Interrogatories establishes these facts as well. Therefore, no issue exists which should disturb the Judgment and Order of the Honorable Courts below.

WHEREFORE, PREMISES CONSIDERED, Respondents-Appellees Members Insurance Group, Ruth Hunter and Leonard Adkins respectfully move this Honorable Supreme Court to dismiss the Petition for Certiorari and alternatively to sustain and affirm the decision of the Court of Appeals for the Fifth Circuit and the United States District Court for the Northern District of Texas.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that copies of the Respondents-Appellees' Brief have been mailed to the Petitioner and all interested parties via certified mail, return receipt requested, this ~~6th~~ day of ~~August, 1989~~

*September*

A handwritten signature in cursive script, appearing to read "Patrick A. Teeling", written over a horizontal line.

Patrick A. Teeling